

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

MARIO BROWN

PLAINTIFF

V.

CIVIL ACTION NO.2:07CV168-WAP-JAD

COAHOMA COUNTY SHERIFF DEPT. et al.

DEFENDANTS

REPORT AND RECOMMENDATION

On 27th day of February, 2008, plaintiff, formerly a pretrial detainee at the Coahoma County Jail, appeared before the court, via video conference, for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

The plaintiff's complaint alleges that he had been having serious neck pain since July, 2007 and was denied medical treatment for the condition.. At the *Spears* hearing he complained that the problem was back pain. He alleges that had to obtain sick call forms from other inmates and that there was a six month delay in treatment. His 'motion to amend' however alleges treatment on November 23, 2007 and December 3, 2007, though he expresses his dissatisfaction with the treatment. He testified at the hearing that he wanted an x-ray but the doctor he saw only prescribed Ibuprofen. Other than this over-the-counter medication, this back problem has not been treated but has substantially resolved. The medical condition he has alleged does not amount to a serious medical need necessary to support a § 1983 claim.

Accordingly it is recommended that the complaint be dismissed with prejudice.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.1(C) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file

written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 27th day of February, 2008.

/s/ Jerry A. Davis
UNITED STATES MAGISTRATE JUDGE